



# San Diego City Attorney **CASEY GWINN**

## **MEDIA ADVISORY**

**FOR IMMEDIATE RELEASE: June 26, 2002**

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**Response to United States Court of Appeals for the Ninth Circuit  
Philip K. Paulson vs City of San Diego; Mt. Soledad Memorial Association  
Statement by San Diego City Attorney Casey Gwinn**

"We are disappointed in this decision. In reversing an earlier opinion of the same court, an 11 judge panel of the U.S. Court of Appeals for the Ninth Circuit ruled 7-4 that the public sale at issue was unconstitutional. However, the Court based its decision on an area of California Constitutional law that none of the parties had the opportunity to brief or argue. In fact, it's puzzling because the ACLU attorneys didn't even raise this issue at the rehearing. In addition, the Ninth Circuit Court of Appeals never asked any questions pertaining to this provision which generally prohibits governmental aid for sectarian purposes. This is the same court that apparently today found the Pledge of Allegiance unconstitutional.

As it stands now, the matter will be remanded back to the Southern District Court for a determination of possible remedies. That'll give the City the opportunity to analyze what other options it may have to resolve the issue. Of course, we remain committed to following the law whatever that may be.

This case has been on-going for the past 13 years. It's not likely to end anytime soon. We are going to be advising the San Diego City Council regarding their options, including a possible appeal to the United States Supreme Court."

**Brief legal history:**

**February 2000**

The City of San Diego prevailed in the Southern District Court. Judge Thompson who was intimately familiar with the facts of the case ruled that the public sale was constitutional.

**August 2001:**

A three judge panel of the Ninth Circuit Court of Appeals, unanimously upheld the District court's ruling that the public sale was constitutional.

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